October 5, 2016

To:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut

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Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103")

Boyle & Co. LLP is pleased to comment on certain aspects of the proposed amendments to NI 31-103 described in the CSA Notice and Request for comments of July 7, 2016.

Background - Boyle & Co. LLP

Boyle & Co. LLP is a law firm in Ontario practicing exclusively in securities law. Our partners have designed and implemented Canada's only direct internet distribution of securities and founded the Canadian Securities Exchange, designing both the original regulatory and market models. Our clients include, among others, many small and medium enterprises, non-bank owned investment dealers and exempt market

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dealers. We are well positioned to observe and comment on the exempt market and securities regulation of the exempt market.

Proposed Exempt Market Dealer Amendments

Client Best Interests Not Served

Exempt market dealers acting in the best interests of investor clients must be entitled to offer to those clients the best quality, most suitable investments from the universe of available investments, including securities sold under a prospectus.

Prospectus Distributed Securities

Securities distributed under a prospectus provide certain best-in-class characteristics, such as CSA member securities regulator review, mandated form disclosure, including financial statement disclosure, the benefits of third party due diligence procedures related to liability for misrepresentation and potentially wider distribution and consequent liquidity.

Investor Protection Already Addressed

Existing prospectus requirements (including dealer certification) already limit exempt market dealer participation in prospectus distributions to selling group participation and, together with know-your-client, know-your-product and suitability requirements, robustly address investor protection concerns.

Competition

Competition in the capital markets: It is improper for CSA to suppress competition "as a matter of policy" as stated under s.4 "Anticipated costs and benefits."

It is unwarranted to burden investors and registrants with onerous micro regulated know-your-client obligations and intrusive suitability requirements, among others, while preventing access by investors to suitable, quality investments merely in the interests of pursing a regulatory policy of preventing competition.

Micro Regulation

Micro regulation of the capital markets is undermining the purposes of securities legislation.

In Ontario (and similarly in Yukon, Saskatchewan, Quebec, Prince Edward Island, Nova Scotia, Nunavut, Northwest Territories and New Brunswick) the purposes of securities legislation are:

> "(a) to provide protection to investors from unfair, improper or fraudulent practices; and
> (b) to foster fair and efficient capital markets and confidence in capital markets." [s.1.1 *Securities Act (Ontario)*]

The fundamental principles to be regarded in pursuing those purposes include explicitly:

> "The primary means for achieving the purposes are,
>
> (i) requirements for timely, accurate and efficient disclosure of information
> (ii) restrictions on fraudulent and unfair market practices and procedures; and

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(iii) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants." [ss.2.1(2) *Securities Act (Ontario)*]

Prohibiting exempt market dealers from participating in prospectus qualified distributions furthers neither of the two purposes of securities legislation and ignores the stated fundamental principle primary means to achieve those purposes.

We note the Ontario Securities Commission, on its website, states it was given rule-making authority "to use its expertise to create the detailed rules necessary to meet the purposes of the Securities Act". Unfortunately, for investors, dealers and issuers, the proposed exempt market dealer amendments neither demonstrate expertise (other than the expertise to micro regulate by way of detailed rules) nor meet the purposes of the securities legislation.

Regulatory Conflict of Interest

We also draw your attention to the most pressing issue facing capital market participants, including investors, dealers and securities regulations: regulatory conflict of interest. The exempt market dealer amendments are a prime example of the adverse impact of regulatory conflict of interest on securities regulation in Canada.

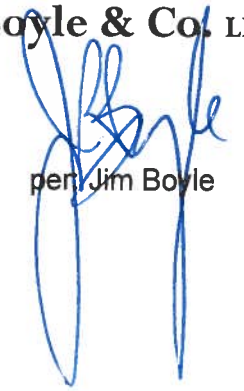
Please see our letter of September 30, 2016 commenting on the CSA Consultation Paper 33-404 Proposals, a copy of which is attached as Schedule "A" for your ease of reference, for further comments on regulatory conflict of interest.

No Rationale – Do Not Implement

In conclusion, there is no sound rationale for prohibiting exempt market dealers from participating in distributions of securities under a prospectus. The proposed amendment must not be implemented.

Yours very truly,

Boyle & Co. LLP



per: Jim Boyle

JPB/tc

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Schedule "A"

September 30, 2016

To:

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Manitoba Securities Commission
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Re: CSA Request for Comment – Canadian Securities Administrators ("CSA") Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients (the "Consultation Paper Proposals")

Boyle & Co. LLP is writing in response to the request for comments on the Consultation Paper Proposals.

Background - Boyle & Co. LLP

Boyle & Co. LLP is a law firm in Ontario practicing exclusively in securities law. Our partners have designed and implemented Canada's only direct internet distribution of securities, founded the Canadian Securities Exchange, designing both the original regulatory and market models and are founders, principals and chief compliance officer of an exempt market dealer. Our clients include, among others, non-bank owned investment dealers, exempt market dealers, issuers,

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advisers and institutional investors. We are well positioned to observe and comment on securities regulation and on the relationship between clients and their advisers, dealers and representatives.

The Most Pressing Issue

We take this opportunity to draw to your attention the most pressing issue facing investors, advisers, dealers, representatives, clients, capital markets and securities regulators: regulatory conflict of interest.

Regulatory conflict of interest is inherent in the delegation to securities regulators of the legislative function through rule making authority.

Regulatory conflict of interest describes the relationship between public officials (regulators) and matters of interest or benefit to them (more regulation). In a rule making authorized regulatory environment, the regulator is its own principal client and beneficiary of regulation as the administrator of the self-made regulations. The relationship between rule making authority and expansion of regulation is the core of regulatory conflict of interest.

Absent responsible, perceptive, active and meaningful checks and balances in the rule making function, despite well intentioned stated goals, whether investor protection or confidence in capital markets, the only certainty is increased regulation.

Regulatory conflict of interest must be identified, must be disclosed, must be avoided and at the least must be managed if unavoidable.

Checks and Balances Needed

In democratic, capitalist states constitutional or traditional checks and balances guard citizens from the overreaching state apparatus. In the UK, by tradition, elected, hereditary/appointed and judiciary check and balance. In the US elected, executive and judiciary branches check and balance constitutionally.

The constitutionally designated separation of powers amongst the legislature, senate and judiciary give Canadians a historically tested 3 pillar system of checks and balances. Delegated rule making authority disrupts this foundational constitutional principle, adding a fourth regulatory pillar, without any checks and balances, traditional or constitutional.

Checks and balances are absent in the delegated rule making legislative function, attenuating regulatory conflict of interest.

Consultation Paper Proposals Considered

The Consultation Paper Proposals must be considered keeping in mind the fundamental regulatory conflict of interest inherent in the rule making function.

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The Consultation Paper Proposals are a prime example of regulatory conflict of interest. The unarticulated assumption underlying targeted regulatory (i.e. micro regulated) proposals is that targeted micro regulatory enactments will best achieve the stated desired outcome.

Undoubtedly, the Consultation Paper Proposals will result in more regulation and extensive targeted regulatory actions (information gathering, providing guidance, articulating expectations, surveillance and compliance reviews).

Otherwise, simply considered, do the Consultation Paper Proposals represent the best designed approach to achieve desired outcomes? Unfortunately, the answer is no, both the stated desired goals and the proposed targeted mechanism are flawed by the impact of unrecognized regulatory conflict of interest.

Call For Action to Securities Regulators

The CSA must become self-aware and acknowledge the danger that regulatory conflict of interest presents to efficient and effective securities regulation. Securities regulators risk completely losing sight of their responsibility to investors and capital markets otherwise.

It is incumbent upon the CSA, as Canada's securities regulator, to propose, implement and conduct effective, efficient, principles-based regulation appropriate to Canadian capital markets and investors. Only you have the resources and capacity to create enlightened, elegant securities regulation. We are confident you will rise to the challenge.

Yours very truly,
Boyle & Co. LLP

per: Jim Boyle

JPB/tc

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